

EXHIBIT

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**OUTERBRIDGE ACCESS
ASSOCIATION, SUING ON BEHALF
OF DIANE CROSS; and DIANE
CROSS, An Individual,**

Plaintiffs,

v.

**MARIE CALLENDER'S PIE SHOPS,
INC. d.b.a. MARIE CALLENDER'S
#254; PACIFIC BAGELS, LLC
d.b.a. BRUEGGARS BAGELS;
COURTYARD HOLDINGS, LP; AND
DOES 1 THROUGH 10, Inclusive,**

Defendants.

Case No.: 07cv2129 BTM (AJB)

**[PROPOSED] FIRST AMENDED
COMPLAINT**

CLASS ACTION

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1,
54.3]**

**DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b)]**

INTRODUCTION

1. Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS AND ITS MEMBERS; and DIANE CROSS, An Individual,
herein complain, by filing this Civil Complaint in accordance with
rule 8 of the Federal Rules of Civil Procedure in the Judicial

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1 District of the United States District Court of the Southern
2 District of California, that Defendants have in the past, and
3 presently are, engaging in discriminatory practices against
4 individuals with disabilities, specifically including minorities
5 with disabilities. Plaintiffs allege this civil action and others
6 substantial similar thereto are necessary to compel access
7 compliance because empirical research on the effectiveness of
8 Title III of the Americans with Disabilities Act indicates this
9 Title has failed to achieve full and equal access simply by the
10 executive branch of the Federal Government funding and promoting
11 voluntary compliance efforts. Further, empirical research shows
12 when individuals with disabilities give actual notice of potential
13 access problems to places of public accommodation without a
14 federal civil rights action, the public accommodations do not
15 remove the access barriers. Therefore, Plaintiffs make the
16 following allegations in this federal civil rights action:

JURISDICTION AND VENUE

18 2. The federal jurisdiction of this action is based on the
19 Americans with Disabilities Act, 42 United States Code 12101-
20 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
21 District of the United States District Court of the Southern
22 District of California is in accordance with 28 U.S.C. § 1391(b)
23 because a substantial part of Plaintiffs' claims arose within the
24 Judicial District of the United States District Court of the
25 Southern District of California.

SUPPLEMENTAL JURISDICTION

27 3. The Judicial District of the United States District Court of
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1 the Southern District of California has supplemental jurisdiction
2 over the state claims as alleged in this Complaint pursuant to 28
3 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
4 in this action is because all the causes of action or claims
5 derived from federal law and those arising under state law, as
6 herein alleged, arose from common nucleus of operative facts. The
7 common nucleus of operative facts, include, but are not limited
8 to, the incidents where Plaintiffs were denied full and equal
9 access to Defendants' facilities, goods, and/or services in
10 violation of both federal and state laws when they attempted to
11 enter, use, and/or exit Defendants' facilities as described below
12 within this Complaint. Further, due to this denial of full and
13 equal access, OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
14 DIANE CROSS and DIANE CROSS, An Individual, and other persons with
15 disabilities were injured. Based upon the said allegations, the
16 state actions, as stated herein, are so related to the federal
17 actions that they form part of the same case or controversy and
18 one would ordinarily expect the actions to be tried in one
19 judicial proceeding.

NAMED DEFENDANTS AND NAMED PLAINTIFF

21 4. Defendants are, and, at all times mentioned herein, were, a
22 business or corporation or franchise organized and existing and/or
23 doing business under the laws of the State of California.
24 Plaintiff is informed and believes and thereon alleges that
25 Defendant MARIE CALLENDER'S PIE SHOPS, INC. is the owner,
26 operator, franchiser, licensor, and/or is doing business as MARIE
27 CALLENDER'S #254. Defendant MARIE CALLENDER'S PIE SHOPS, INC.
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1 d.b.a. MARIE CALLENDER'S #254 is located at 11122 Rancho Carmel
2 Drive, San Diego, California 92128, Assessor Parcel Number: 313-
3 730-38. Plaintiff is informed and believes and thereon alleges
4 that Defendant PACIFIC BAGELS, LLC is the owner, operator,
5 franchiser, licensor, and/or is doing business as BRUEGGARS
6 BAGELS. Defendant PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS is
7 located at 11134 Rancho Carmel Drive, San Diego, California 92128,
8 Assessor Parcel Number: 313-042-04. Plaintiff is informed and
9 believes and thereon alleges that Defendant COURTYARD HOLDINGS, LP
10 is the owner, operator, and/or lessor of the real property located
11 at 11122 Rancho Carmel Drive, San Diego, California 92128,
12 Assessor Parcel Number: 313-730-38. Defendant COURTYARD HOLDINGS,
13 LP is located at 601 Thirteenth Street, Suite 450, Washington, DC
14 20005.

15 5. The words Plaintiff, Plaintiffs, Plaintiff's Member, and
16 Plaintiff's Members as used herein specifically include
17 OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS and
18 DIANE CROSS, An Individual.

19 6. Defendants Does 1 through 10, were at all times relevant
20 herein subsidiaries, employers, employees, agents, of MARIE
21 CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; PACIFIC
22 BAGELS, LLC d.b.a. BRUEGGARS BAGELS; and COURTYARD HOLDINGS, LP.
23 Plaintiffs are ignorant of the true names and capacities of
24 Defendants sued herein as Does 1 through 10, inclusive, and
25 therefore sue these Defendants by such fictitious names.
26 Plaintiffs will pray leave of the court to amend this complaint to
27 allege the true names and capacities of the Does when ascertained.
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1 7. Plaintiffs are informed and believe, and thereon allege, that
2 Defendants and each of them herein were, at all times relevant to
3 the action, the owner, lessor, lessee, franchiser, franchisee,
4 general partner, limited partner, agent, employee, representing
5 partner, or joint venturer of the remaining Defendants and were
6 acting within the course and scope of that relationship.
7 Plaintiffs are further informed and believe, and thereon allege,
8 that each of the Defendants herein gave consent to, ratified,
9 and/or authorized the acts alleged herein to each of the remaining
10 Defendants.

11 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO**
12 **ALL DEFENDANTS**

13 8. Plaintiffs are members of a group within the State of
14 California composed of persons with a wide range of disabilities,
15 limited to persons who use wheelchairs for mobility, who must be
16 able to access retail merchandise establishments, like Defendants'
17 establishments located at 11122 Rancho Carmel Drive, San Diego,
18 California 92128, Assessor Parcel Number: 313-730-38, and 11134
19 Rancho Carmel Drive, San Diego, California 92128, Assessor Parcel
20 Number: 313-042-04. Plaintiffs are precluded from equal access to
21 Defendants' establishments so meaningfully because the
22 establishments, and each of them, fail to provide access for
23 members of the disability community who use a wheelchair for
24 mobility to the disabled parking, exterior path of travel,
25 entrance, food service counter, and women's restroom and seating
26 within the facilities. The Supreme Court of the United States has
27 held as long as the class representative provides adequate

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1 representation for the class' interests, the court has the power
2 to adjudicate the rights and obligations of all class members -
3 even those who would otherwise be beyond the reach of its personal
4 jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985).
5 This case stands for the proposition that minimum contacts are not
6 required with nonresident members of a plaintiff class because,
7 "the burdens placed by a State upon absent class action plaintiff
8 are not of the same order or magnitude as those it places on an
9 absent defendant." Id. Plaintiffs allege they will insure class
10 members shall receive adequate notice of the proceedings and the
11 opportunity to "opt out," if required

12 9. Defendants have conducted themselves such as to establish a
13 pattern and practice of architectural discrimination. Plaintiffs
14 allege that Defendants have control over each and every facility,
15 establishment, and/or business located within the property located
16 at 11122 Rancho Carmel Drive, San Diego, California 92128,
17 Assessor Parcel Number: 313-730-38, and 11134 Rancho Carmel Drive,
18 San Diego, California 92128, Assessor Parcel Number: 313-042-04.
19 Accordingly, Plaintiffs allege Defendants are responsible for
20 removing architectural barriers at Defendants' facilities and the
21 establishments/businesses contained therein.

22 10. For the aforementioned reasons, Plaintiffs allege they are
23 proper class representatives for members of the disability
24 community who use a wheelchair for mobility because the members of
25 the disability community who use a wheelchair for mobility are so
26 numerous that joinder is impracticable due to the fact more than
27 one hundred (100) persons fall within the membership description.
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1 Also, the questions of law or fact are so common because the
2 members of the disability community who use a wheelchair for
3 mobility are being denied their civil rights under federal and
4 state laws - that is, each member of the disability community who
5 use a wheelchair for mobility suffered substantially similar
6 violations relating to the disabled parking, exterior path of
7 travel, entrance, food service counter, and women's restroom and
8 seating within the facility. Further, the claims or defenses of
9 the representative parties are typical - Plaintiffs have the right
10 to access facilities, establishments, and businesses like those
11 within the property located at 11122 Rancho Carmel Drive, San
12 Diego, California 92128, Assessor Parcel Number: 313-730-38, and
13 11134 Rancho Carmel Drive, San Diego, California 92128, Assessor
14 Parcel Number: 313-042-04, and the businesses that are located
15 thereon for many reasons including without limitation the purchase
16 of retail merchandise. Defendants' facilities are open to the
17 general public and Plaintiffs have been denied access because of
18 violations, as outlined above and specifically addressed elsewhere
19 within this Civil Complaint.

20 11. Additionally, Plaintiffs, as the named representatives, will
21 fairly and adequately represent the interests of the class because
22 Plaintiffs and the members of the disability community in the
23 State of California who use a wheelchair for mobility have
24 suffered substantially similar violations. Finally, a pattern and
25 practice exists on the part of Defendants, and each of them, of
26 architectural discrimination at their public facilities located
27 within the State of California. On information and good faith
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1 belief, Plaintiffs thereon allege that Defendants, prior to the
2 passing of the Americans With Disabilities Act in 1992, conceived,
3 commissioned, designed, and implemented among other things, a
4 design for their public facilities, including, but not limited to
5 the disabled parking, exterior path of travel, entrance, food
6 service counter, and women's restroom and seating within the
7 facility which do not meet the minimal standards outlined under
8 the federal regulations known as the Americans With Disabilities
9 Act Accessibility Guidelines ("ADAAG") and state regulations, also
10 known as Title 24 of the California Building Code, and to which
11 non-compliant plan they continue to utilize to the injury of the
12 members of the class. For these reasons and the facts as stated
13 herein, Plaintiffs have the right to maintain this statewide class
14 action pursuant to Fed.R.Civ.P. Rule 23(b).

CONCISE SET OF FACTS

16 12. Plaintiff OUTERBRIDGE ACCESS ASSOCIATION is an organization
17 that advocates on the behalf of its members with disabilities when
18 their civil rights and liberties have been violated. Plaintiff's
19 member DIANE CROSS is a member of Plaintiff Organization and has
20 physical impairments and due to these physical impairments she has
21 learned to successfully operate a wheelchair. Further,
22 Plaintiff's Member and Plaintiff DIANE CROSS' said physical
23 impairments substantially limits one or more of the following
24 major life activities including but not limited to: walking.
25 13. On November 11, 2006, Plaintiff CROSS went to Defendants'
26 public accommodation facilities known as MARIE CALLENDER'S PIE
27 SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; PACIFIC BAGELS, LLC
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1 d.b.a. BRUEGGARS BAGELS; COURTYARD HOLDINGS, LP, located at 11122
2 Rancho Carmel Drive, San Diego, California 92128, Assessor Parcel
3 Number: 313-730-38, and 11134 Rancho Carmel Drive, San Diego,
4 California 92128, Assessor Parcel Number: 313-042-04, to utilize
5 their goods and/or services accompanied by a friend. When
6 Plaintiff CROSS patronized Defendants' facilities, she was unable
7 to use and/or had difficulty using the public accommodations'
8 facilities within the common area including but not limited to the
9 disabled parking and exterior path of travel, as said were not
10 accessible because they failed to comply with ADA Access
11 Guidelines For Buildings and Facilities (hereafter referred to as
12 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
13 California's Title 24 Building Code Requirements. Defendants
14 failed to remove barriers to equal access within the common area
15 in which the public accommodation facilities known as MARIE
16 CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S #254; and
17 PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS are located.

18 14. Plaintiff CROSS personally experienced difficulty with said
19 access barriers within the common area in which the public
20 accommodation facilities known as MARIE CALLENDER'S PIE SHOPS,
21 INC. d.b.a. MARIE CALLENDER'S #254, (hereinafter "MARIE
22 CALLENDER'S #254"), and PACIFIC BAGELS, LLC d.b.a. BRUEGGARS
23 BAGELS, (hereinafter "BRUEGGARS BAGELS"), are located. The
24 following examples of known barriers to access are not an
25 exhaustive list of the barriers to access that exist within the
26 common area of Defendants' facilities. For example, a "Van
27 Accessible" disabled parking space is located directly in front of
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1 Pearle Vision, which is near MARIE CALLENDER'S #254; and BRUEGGARS
2 BAGELS. The access aisle for this "Van Accessible" disabled
3 parking space fails to be compliant, as a ramp impermissibly
4 encroaches into the access aisle. There are two (2) designated
5 disabled parking spaces directly serving MARIE CALLENDER'S #254.
6 The access aisle in between these two spaces fails to be
7 accessible, as a ramp impermissibly encroaches into this access
8 aisle. There is also a "Van Accessible" disabled parking space
9 located in the middle of the parking lot. This space fails to be
10 accessible, as it fails to provide an accessible route to any
11 of the facilities entrance located within the complex. Patrons
12 using this space would be forced to transverse through vehicular
13 traffic without the benefit of a marked path of travel.

14 15. When Plaintiff CROSS patronized Defendants' MARIE CALLENDER'S
15 #254 facilities, she was unable to use and/or had difficulty using
16 the public accommodations' facilities including but not limited to
17 the entrance, food service counter, and women's restroom, as said
18 were not accessible because they failed to comply with ADA Access
19 Guidelines For Buildings and Facilities (hereafter referred to as
20 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
21 California's Title 24 Building Code Requirements. Defendants
22 failed to remove barriers to equal access within the public
23 accommodation facilities known as MARIE CALLENDER'S #254.

24 16. Plaintiff CROSS personally experienced difficulty with said
25 access barriers at MARIE CALLENDER'S #254. The following examples
26 of known barriers to access are not an exhaustive list of the
27 barriers to access that exist at Defendants' facilities. For
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1 example, the entrance to MARIE CALLENDER'S #254 fails to display
2 the required International Symbol of Accessibility. The salad bar
3 fails to be accessible, as condiments fail to be located within
4 accessible reach ranges

5 17. The entrance door to the women's restroom within MARIE
6 CALLENDER'S #254 fails to be accessible, as it requires an
7 excessive amount of pressure to open. Also, within the women's
8 restroom, the lavatory handles fail to be accessible, as they
9 require tight grasping and/or twisting of the wrist to operate.

10 18. When Plaintiff CROSS patronized Defendants' BRUEGGARS BAGELS
11 facilities, she was unable to use and/or had difficulty using the
12 public accommodations' facilities including but not limited to the
13 entrance, food service counters, women's restroom, and seating, as
14 said were not accessible because they failed to comply with ADA
15 Access Guidelines For Buildings and Facilities (hereafter referred
16 to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
17 California's Title 24 Building Code Requirements. Defendants
18 failed to remove barriers to equal access at the public
19 accommodation facilities known as BRUEGGARS BAGELS.

20 19. Plaintiff CROSS personally experienced difficulty with said
21 access barriers at BRUEGGARS BAGELS. The following examples of
22 known barriers to access are not an exhaustive list of the
23 barriers to access that exist at Defendants' facilities. For
24 example, the entrance to BRUEGGARS BAGELS fails to display the
25 required International Symbol of Accessibility.

26 20. The counter within BRUEGGARS BAGELS where patrons order and
27 also where the trays are kept fails to be accessible, as it is too
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high to be accessible. There also fails to be any disability signage informing disabled patrons that assistance is available upon request. Also, the tableware, condiments, and napkins fail to be accessible, as they fail to be located within accessible reach ranges. The napkins are located impermissibly high above the trash receptacle.

21. Within BRUEGGARS BAGELS, the women's restroom fails to be accessible, as highchairs were stacked in front of the door. Also within the BRUEGGARS BAGELS women's restroom, the paper towel dispenser fails to be accessible, as it is mounted at an excessive 52" high and the toilet tissue dispenser fails to be accessible, as it is mounted an impermissible 44" high.

22. BRUEGGARS BAGELS fails to provide any accessible seating inside or outside of the facility.

23. Plaintiffs can prove these barriers as Plaintiffs conducted a preliminary survey of Defendants' facilities. Plaintiff Association alleges that its visually and hearing impaired members desire to go to Defendants' facility but cannot because of lack of auxiliary aids. Plaintiffs specifically allege that Defendants knew, to a substantial certainty, that the architectural barriers precluded wheelchair access. First, Plaintiffs will prove that Defendants had actual knowledge that the architectural barriers precluded wheelchair access and that the noncompliance with ADAAG as to accessible entrances was intentional. Second, due to the abundance of ADA information and constant news covers of ADA lawsuits, Defendants had actual knowledge of the ADA and decided deliberately not to remove architectural barriers. Third,

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1 Defendants have no plans to remodel. Fourth, Defendants had
2 actual knowledge of ADA given all the ADA public awareness
3 campaigns, the abundance of free ADA information and the media's
4 constant ADA coverage. Fifth, a human being acting for the
5 defendants made a conscious decision as to how to proceed given
6 the presence of the architectural barriers. Plaintiffs allege
7 any alternative methods preclude integration of wheelchair
8 patrons, as it requires them to use a second-class entrance.
9 Also, expert testimony will show the facility contained
10 inaccessible features. Plaintiffs allege businesses often state
11 that they have few customers with disabilities. Plaintiffs allege
12 such customers avoid patronizing inaccessible business and are
13 deterred from patronizing such businesses.

14 24. Plaintiff's Member and Plaintiff DIANE CROSS intends to
15 return to Defendants' public accommodation facilities in the
16 immediate future. Plaintiffs' Member and Plaintiff DIANE CROSS is
17 presently deterred from returning due to her knowledge of the
18 barriers to access that exist at Defendants' facilities.

19 25. Pursuant to federal and state law, Defendants are required to
20 remove barriers to their existing facilities. Further, Defendants
21 had actual knowledge of their barrier removal duties under the
22 Americans with Disabilities Act and the Civil Code before January
23 26, 1992. Also, Defendants should have known that individuals
24 with disabilities are not required to give notice to a
25 governmental agency before filing suit alleging Defendants failed
26 to remove architectural barriers.

27 26. Based on these facts, Plaintiffs allege they were
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1 discriminated against each time they patronized Defendants'
2 facilities. Plaintiff's Member and Plaintiff DIANE CROSS was
3 extremely upset due to Defendants' conduct.

NOTICE

5 27. Plaintiffs are not required to provide notice to the
6 defendants prior to filing a complaint. Skaiff v Meridien N. Am.
7 Beverly Hills, LLC, 506 F.3d 832 (9th Cir. 2007), see also Botosan
8 v. Paul McNally Realty, 216 F.3d 827, 832 (9th Cir 2000).

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

11 28. MARIE CALLENDER'S PIE SHOPS, INC. d.b.a. MARIE CALLENDER'S
12 #254; PACIFIC BAGELS, LLC d.b.a. BRUEGGARS BAGELS; COURTYARD
13 HOLDINGS, LP; and Does 1 through 10 will be referred to
14 collectively hereinafter as "Defendants."

15 29. Plaintiffs aver that the Defendants are liable for the
16 following claims as alleged below:

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

18 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The
19 Americans With Disabilities Act Of 1990

20 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal Access

21 30. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
22 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
23 denied full and equal access to Defendants' goods, services,
24 facilities, privileges, advantages, or accommodations. Plaintiffs
25 allege Defendants are a public accommodation owned, leased and/or
26 operated by Defendants. Defendants' existing facilities and/or
27 services failed to provide full and equal access to Defendants'
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1 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's
2 Member and Plaintiff DIANE CROSS was subjected to discrimination
3 in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
4 U.S.C. § 12188 because Plaintiff's Member and Plaintiff DIANE
5 CROSS was denied equal access to Defendants' existing facilities.
6 31. Plaintiff's Member and Plaintiff DIANE CROSS has physical
7 impairments as alleged in ¶ 12 above because her conditions affect
8 one or more of the following body systems: neurological,
9 musculoskeletal, special sense organs, and/or cardiovascular.
10 Further, Plaintiff's Member and Plaintiff DIANE CROSS' said
11 physical impairments substantially limits one or more of the
12 following major life activities: walking. In addition,
13 Plaintiff's Member and Plaintiff DIANE CROSS cannot perform one or
14 more of the said major life activities in the manner, speed, and
15 duration when compared to the average person. Moreover,
16 Plaintiff's Member and Plaintiff DIANE CROSS has a history of or
17 has been classified as having a physical impairment as required by
18 42 U.S.C. § 12102(2)(A).
19

20 CLAIM II AGAINST ALL DEFENDANTS: **Failure To Make Alterations In**
21 **Such A Manner That The Altered Portions Of The Facility Are**
22 **Readily Accessible And Usable By Individuals With Disabilities**

23 32. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
24 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
25 denied full and equal access to Defendants' goods, services,
26 facilities, privileges, advantages, or accommodations within a
27 public accommodation owned, leased, and/or operated by Defendants.
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1 Defendants altered their facility in a manner that affects or
2 could affect the usability of the facility or a part of the
3 facility after January 26, 1992. In performing the alteration,
4 Defendants failed to make the alteration in such a manner that, to
5 the maximum extent feasible, the altered portions of the facility
6 are readily accessible to and usable by individuals with
7 disabilities, including individuals who use wheelchairs, in
8 violation of 42 U.S.C. §12183(a)(2).

9 33. Additionally, the Defendants undertook an alteration that
10 affects or could affect the usability of or access to an area of
11 the facility containing a primary function after January 26, 1992.
12 Defendants further failed to make the alterations in such a manner
13 that, to the maximum extent feasible, are readily accessible to
14 and usable by individuals with disabilities in violation 42 U.S.C.
15 §12183(a)(2).

16 34. Pursuant to 42 U.S.C. §12183(a), this failure to make the
17 alterations in a manner that, to the maximum extent feasible, are
18 readily accessible to and usable by individuals with disabilities
19 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
20 Therefore, Defendants discriminated against Plaintiffs in
21 violation of 42 U.S.C. § 12182(a).

22 35. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
23 subjected to discrimination in violation of 42 U.S.C. § 12183(a),
24 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's
25 Member and Plaintiff DIANE CROSS was denied equal access to
26 Defendants' existing facilities.
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1 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural**
2 **Barriers**

3 36. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
4 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
5 denied full and equal access to Defendants' goods, services,
6 facilities, privileges, advantages, or accommodations within a
7 public accommodation owned, leased, and/or operated by Defendants.

8 Defendants failed to remove barriers as required by 42 U.S.C. §
9 12182(a). Plaintiffs are informed, believe, and thus allege that
10 architectural barriers which are structural in nature exist within
11 the physical elements of Defendants' facilities. Title III
12 requires places of public accommodation to remove architectural
13 barriers that are structural in nature to existing facilities.

14 [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to
15 remove such barriers and disparate treatment against a person who
16 has a known association with a person with a disability are forms
17 of discrimination. [See 42 United States Code
18 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DIANE
19 CROSS was subjected to discrimination in violation of 42 United
20 States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they
21 were denied equal access to Defendants' existing facilities.
22

23 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**
24 **Policies And Procedures**

25 37. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in
26 this complaint, Defendants failed and refused to provide a
27 reasonable alternative by modifying its practices, policies and
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1 procedures in that they failed to have a scheme, plan, or design
2 to assist Plaintiffs and/or others similarly situated in entering
3 and utilizing Defendants' services, as required by 42 U.S.C. §
4 12188(a). Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
5 subjected to discrimination in violation of 42 United States Code
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
7 Member and Plaintiff DIANE CROSS was denied equal access to
8 Defendants' existing facilities.

9 38. Based on the facts plead at ¶¶ 12 - 28 above, Claims I, II,
10 and III of Plaintiff's First Cause Of Action above, and the facts
11 elsewhere herein this complaint, Plaintiffs will suffer
12 irreparable harm unless Defendants are ordered to remove
13 architectural, non-architectural, and communication barriers at
14 Defendants' public accommodation. Plaintiffs allege that
15 Defendants' discriminatory conduct is capable of repetition, and
16 this discriminatory repetition adversely impacts Plaintiffs and a
17 substantial segment of the disability community. Plaintiffs
18 allege there is a national public interest in requiring
19 accessibility in places of public accommodation. Plaintiffs have
20 no adequate remedy at law to redress the discriminatory conduct of
21 Defendants. Plaintiffs desire to return to Defendants' places of
22 business in the immediate future. Accordingly, the Plaintiffs
23 allege that a structural or mandatory injunction is necessary to
24 enjoin compliance with federal civil rights laws enacted for the
25 benefit of individuals with disabilities.

26 39. WHEREFORE, Plaintiffs pray for judgment and relief as
27 hereinafter set forth.
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SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**
CALIFORNIA ACCESSIBILITY LAWS

CLAIM I: **Denial Of Full And Equal Access**

40. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities.

41. These violations denied Plaintiff's Member and Plaintiff DIANE CROSS full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff DIANE CROSS was denied full, equal and safe access to Defendants' facility, causing severe emotional distress.

CLAIM II: **Failure To Modify Practices, Policies And Procedures**

42. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others similarly situated in entering and utilizing Defendants' services as required by Civil Code §

EXHIBITA

1 54.1. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
2 subjected to discrimination in violation of Civil Code § 54.1.

3 CLAIM III: **Violation Of The Unruh Act**

4 43. Based on the facts plead at ¶¶ 12 - 28 above and elsewhere
5 herein this complaint and because Defendants violated the Civil
6 Code § 51 by failing to comply with 42 United States Code §
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
8 continue to discriminate against Plaintiffs and persons similarly
9 situated in violation of Civil Code §§ 51, 52, and 54.1.

10 44. Based on the facts plead at ¶¶ 12 - 28 above, Claims I, II,
11 and III of Plaintiffs' Second Cause Of Action above, and the facts
12 elsewhere herein this complaint, Plaintiffs will suffer
13 irreparable harm unless Defendants are ordered to remove
14 architectural, non-architectural, and communication barriers at
15 Defendants' public accommodation. Plaintiffs allege that
16 Defendants' discriminatory conduct is capable of repetition, and
17 this discriminatory repetition adversely impacts Plaintiffs and a
18 substantial segment of the disability community. Plaintiffs
19 allege there is a state and national public interest in requiring
20 accessibility in places of public accommodation. Plaintiffs have
21 no adequate remedy at law to redress the discriminatory conduct of
22 Defendants. Plaintiffs desire to return to Defendants' places of
23 business in the immediate future. Accordingly, the Plaintiffs
24 allege that a structural or mandatory injunction is necessary to
25 enjoin compliance with state civil rights laws enacted for the
26 benefit of individuals with disabilities.

27 45. Wherefore, Plaintiffs pray for damages and relief as
28

EXHIBIT**A**

hereinafter stated.

Treble Damages Pursuant To Claims I, II, III Under The California
Accessibility Laws

46. Defendants, each of them respectively, at times prior to and including, the month of November of 2006, and continuing to the present time, knew that persons with physical disabilities were denied their rights of equal access to all portions of this public facility. Despite such knowledge, Defendants, and each of them, failed and refused to take steps to comply with the applicable access statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered by Plaintiffs and other similarly situated persons with disabilities. Defendants, and each of them, have failed and refused to take action to grant full and equal access to persons with physical disabilities in the respects complained of hereinabove. Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or correct complaints about, denial of disabled access and have refused to comply with their legal obligations to make Defendants' public accommodation facilities accessible pursuant to the Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California Code of Regulations (also known as the California Building Code). Such actions and continuing course of conduct by Defendants, and each of them, evidence despicable conduct in conscious disregard of the rights and/or safety of Plaintiffs and of other similarly situated persons, justifying an award of treble damages pursuant to sections 52(a) and 54.3(a) of

EXHIBIT A

1 the California Civil Code.

2 47. Defendants, and each of their actions have also been
3 oppressive to persons with physical disabilities and of other
4 members of the public, and have evidenced actual or implied
5 malicious intent toward those members of the public, such as
6 Plaintiffs and other persons with physical disabilities who have
7 been denied the proper access to which they are entitled by law.
8 Further, Defendants, and each of their, refusals on a day-to-day
9 basis to correct these problems evidence despicable conduct in
10 conscious disregard for the rights of Plaintiffs and other members
11 of the public with physical disabilities.

12 48. Plaintiffs pray for an award of treble damages against
13 Defendants, and each of them, pursuant to California Civil Code
14 sections 52(a) and 54.3(a), in an amount sufficient to make a more
15 profound example of Defendants and encourage owners,
16 lessors/lessees, and operators of other public facilities from
17 willful disregard of the rights of persons with disabilities.
18 Plaintiffs do not know the financial worth of Defendants, or the
19 amount of damages sufficient to accomplish the public purposes of
20 section 52(a) of the California Civil Code and section 54.3 of the
21 California Civil Code.

22 49. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.

24 ///

25 ///

26 **DEMAND FOR JUDGMENT FOR RELIEF:**

27 A. For general damages pursuant to Cal. Civil Code §§ 52 or
28

EXHIBIT

A

54.3;

B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

D. For injunctive relief pursuant to 42 U.S.C. § 12188(a). Plaintiffs request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities.

E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Code of Civil Procedure §§ 1032 and 1033.5;

F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);

G. A Jury Trial and;

H. For such other further relief as the court deems proper.

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: December 28, 2007

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